



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET, SW  
ATLANTA, GEORGIA 30303-3104

5/14/2020

Ms. Jennifer Garland  
Deputy Field Supervisor  
U.S. Fish and Wildlife Service  
Kentucky Ecological Services Field Office  
330 West Broadway, Suite 265  
Frankfort, Kentucky 40601

Subject: Transmittal of an Endangered Species Act Section 7(a) Biological Evaluation for the EPA's Clean Water Act, Section 303(c) Approval Action of Water Quality Standards Revisions for the Commonwealth of Kentucky

Ms. Garland:

The U.S. Environmental Protection Agency is obligated under Section 7(a)(2) of the Endangered Species Act (ESA), 16 U.S.C. § 1536(a)(2) to ensure that any action it approves is not likely to jeopardize the continued existence of any threatened or endangered species or result in the destruction or adverse modification of critical habitat. The Federal action being evaluated is the potential EPA approval of revisions to Kentucky's Water Quality Standards (WQS) as related to the protection of aquatic life in 401 KAR 10:031, Section 6, specifically updated aquatic life criteria for cadmium and carbaryl. The Commonwealth submitted the WQS revisions by letter dated February 26, 2020, from Anthony Hatton, Commissioner, Kentucky Department for Environmental Protection, to Mary Walker, Regional Administrator, EPA, Region 4. The EPA received the revisions on March 3, 2020.

The aquatic life provisions and the effects determinations for threatened and endangered species in the Commonwealth of Kentucky are described in the enclosed biological evaluation (BE). The EPA is submitting this request under the informal consultation provision of the ESA regulations at 50 CFR Part 402.13 and has made determinations of "no effect" or "may effect, but not likely to adversely affect" for all aquatic and aquatic dependent species and their designated critical habitats in the Commonwealth of Kentucky as detailed in the enclosed BE. The EPA has reviewed the aforementioned revisions to this Rule and anticipated their approval pursuant to the time frame outlined in Section 303(c) of the Clean Water Act.

The Memorandum of Agreement signed by the Service and the EPA regarding enhanced coordination under the CWA and ESA, provision V.B.6., requests that the EPA notify the Service in writing when making a "may effect, but not likely to adversely affect" determination. Additionally, the Service will respond in writing within 30 days of the receipt of such a determination, unless extended by mutual agreement. The response will state whether the Service concurs or does not concur. If the Service does not concur, it will provide a written explanation that includes the species and/or critical habitat of

concern, the perceived adverse effects, supporting information and basic rationale. 66 Fed. Reg. 11202-11210 (Feb. 22, 2001).

Please contact Mr. Joel Hansel at (404) 562-9274 or [hansel.joel@epa.gov](mailto:hansel.joel@epa.gov) should you have any questions regarding the enclosed BE.

Sincerely,

Tony Able, Chief  
Water Quality Planning Branch

Enclosure